



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 29345238

Date: JAN. 3, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term “national interest,” *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

¹ *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to her proposed endeavor, the Petitioner indicated that she planned “to work as a CEO/entrepreneur in the United States. I will do this by developing and expanding my own registered and filed company in the nation, [REDACTED] My company will be based out of the state of Colorado.” She further explained that she intends “to establish a spa center to provide both spa and beauty services to Americans. The spa will mix eastern elements (herbal treatment) and western relaxation methods.”

In addition to company formation documents, the Petitioner submitted her business plan for [REDACTED] [REDACTED], a “Spa Relaxing Centre.” This business plan includes industry and market analyses, information about her company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner’s work experience, and a description of company personnel. Regarding future full-time staffing, the Petitioner’s business plan anticipates that her company will employ 9 personnel in year one, 10 in year two, 19 in year three, 20 in year four, and 29 in year five, but she did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while her plan offers revenue projections of \$1,483,200 in year one, \$1,631,520 in year two, \$2,447,280 in year three, \$2,814,372 in year four, and \$4,221,558 in year five, she did not adequately explain how these sales forecasts were calculated.

The record includes information about immigrant entrepreneurs as drivers of economic growth in the pandemic recovery, the Biden Administration’s revival of the international entrepreneur rule, the Biden Administration’s “Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,” and the reasons the United States is losing immigrant entrepreneurs to other nations. Additionally, the Petitioner provided articles discussing immigrants and entrepreneurship, the share of foreign-born health care practitioners and scientists in the United States, immigrant entrepreneurs as founders of Fortune 500 companies, and the reasons immigrants are more likely to become entrepreneurs. She also submitted information about chief executives, management consulting in the United States, the role of entrepreneurship in U.S. job creation and economic dynamism, and the reasons entrepreneurs will be critical to the Biden recovery plan. Here, the Director concluded that the submitted documentation demonstrates the proposed endeavor’s substantial merit. In determining national importance, however, the relevant question is not the value of immigrant entrepreneurship or the Petitioner’s general occupation; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still establish the potential prospective impact of her specific proposed endeavor.

The Petitioner also provided letters of support from B-E, L-P-, M-B-, F-I-, B-G-, K-T-, M-B-, S-O-, T-B-, S-C-, and K-D- discussing her business capabilities and experience. The Petitioner's education, skills, knowledge, and prior work in her field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner also submitted an "Expert Opinion Letter" from H-Q-, a professor at [REDACTED] in support of her national interest waiver. H-Q- contended that the Petitioner's proposed work is of national importance because of the number of direct and indirect jobs her company stands to create. The letter from H-Q-, however, does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work as a spa services company operator offers broader implications in her industry, enhancements to U.S. societal welfare, or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of her proposed endeavor. The Director stated that the Petitioner had not demonstrated that her undertaking stands to have broader implications in her industry, significant potential to employ U.S. workers, or other substantial positive economic effects.

In her appeal brief, the Petitioner argues that she "will be addressing an industry shortage, which cannot be addressed by the U.S. workers as demand exceeds supply." We are not persuaded by the argument that the Petitioner's proposed endeavor has national importance due to the shortage of workers in her field. Here, the Petitioner has not established that her proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner asserts that she "has over fifteen (15) years of progressive experience in the business field" in areas such as "accounting, financial analysis and sales" as well as "wholesale, retail, and hospitality business." She also points to her Master of Business Administration degree and bachelor's degree. As discussed, the Petitioner's education, skills, and knowledge in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner also contends that "[REDACTED] will make a stand and impact, generating jobs for U.S. workers in . . . underutilized areas, improving the wages and working conditions for the U.S. workers, and helping the local community bring investments to the region." The Petitioner, however, has not provided evidence demonstrating that her proposed business activities would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the potential economic activity of her specific endeavor stands to generate substantial positive economic effects in the region where her company operates or in other parts of the United States.

Additionally, the Petitioner claims that her proposed endeavor stands to affect the national economy by “offering economic convenience and agility” to “small and medium-sized U.S. companies,” “promoting growth and expansion and driv[ing] change with innovation,” “stimulating the domestic job market,” and generating “new jobs for American workers.” She also cites to information from public policy organizations, news media, and U.S. federal agencies to show the overall value of immigrant entrepreneurship, but she has not demonstrated how operating a spa services company as contemplated by her proposed endeavor rises to a level of national importance.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. While the Petitioner’s statements reflect her intention to provide spa and beauty services to her company’s clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her company and its clientele to impact her field, the spa industry, the U.S. economy, or U.S. societal welfare more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not demonstrated that her company’s future staffing levels and business activity stand to provide substantial economic benefits in Colorado or the United States. While the Petitioner claims that her company has growth potential, she has not presented evidence indicating that the benefits to the regional or national economy resulting from her undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her endeavor stands to generate “employment opportunities for U.S. workers,” she has not offered sufficient evidence that her endeavor offers Colorado or the United States a substantial economic benefit through employment levels, tax revenue, or business activity.

For the aforementioned reasons, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive

of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.